

REMARKS

The Examiner has objected to the title and abstract. Such objections have been avoided by virtue of the clarifications made hereinabove.

The Examiner has rejected Claim 19 under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter, lacking patentable utility. This rejection has been avoided by virtue of the clarifications made hereinabove to such claim.

The Examiner has again rejected the claims under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicant regards as the invention. In particular, the Examiner again takes issue with applicant's claimed "reconstructing the session," and particularly, "reconstructing a voice call session." In applicant's previous response, applicant argued that such terminology is sufficiently clear, in view of both the teachings of the specification and the plain meaning of "reconstructing." Evidence of the plain and ordinary meaning of the term "reconstructing" is found in the following dictionary definition.

**reconstruct**

1. To construct again; rebuild.
2. To assemble or build again mentally; re-create: reconstructed the sequence of events from the evidence.
3. To cause to adopt a new attitude or outlook: a diehard traditionalist who could not be reconstructed.

*The American Heritage® Dictionary of the English Language, Fourth Edition*

*Copyright © 2000 by Houghton Mifflin Company.*

*Published by Houghton Mifflin Company. All rights reserved.*

The Examiner has taken issue with the fact that applicant has relied on both the teachings of the specification and the plain meaning of "reconstructing." Further, the Examiner has stated that "reconstructing a voice call session" "will be treated as the gathering of information about the voice call session, and the analyzing of this gathered information in order to monitor or account the specific voice call flow (session), or sets of voice call flows (sessions)."

Since such definition does not reflect the plain and ordinary meaning of the term 'reconstruct' (as constrained by the specification and evidenced by the above exemplary definition), applicant respectfully disagrees with this interpretation. It appears that the Examiner is requesting an explicit specific definition of the phrase "reconstructing the session." To overcome the Examiner's concerns, such a definition is set forth as follows:

"reconstructing a voice call session" is to be interpreted as an operation that "constructs again, rebuilds, and/or recreates (per the above definition) a voice call session that comprises a plurality of voice call flows which, in turn, comprise a plurality of voice call packets, wherein the reconstruction is performed utilizing at least one application associated with the voice call session."

In view of the above definition, applicant thus argues that the present claim language is sufficiently clear and definite.

The Examiner has rejected Claims 1-4, 6-17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Chiu et al. (U.S. Patent Number 5,101,402), in view of Kia (U.S. Patent Number 6,404,870). Still yet, the Examiner has rejected Claims 1-4, 6-17, and 19 under 35 U.S.C. 103(a) as being unpatentable over McCreery et al. (U.S. Patent Number 5,787,253), in view of Ronen (U.S. Patent Number 5,845,267), in further view of Kia (U.S. Patent Number 6,404,870). Applicant respectfully disagrees with such rejections, especially in view of the amendments made hereinabove.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the

prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991). Applicant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met.

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Chiu and McCreery in view of the teachings of Kia. Applicant respectfully disagrees with this proposition, especially in view of the vast evidence to the contrary.

Further, Chiu and McCreery relates to systems for monitoring and analyzing network activity, while Kia relates to a system for authorizing VoIP calls. To simply glean features from a system for authorizing VoIP calls, such as that of Kia, and combine the same with the *non-analogous art* of systems for monitoring and analyzing network activities, such as those of Chiu and McCreery would simply be improper. Systems for authorizing VoIP calls conditionally preclude VoIP calls based on various accounting criteria, while systems for monitoring and analyzing network activity monitor network performance.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) In view of the vastly different types of problems a system for authorizing VoIP calls addresses as opposed to systems for monitoring and analyzing network activity, the Examiner's proposed combination is inappropriate.

The Examiner has further rejected Claims 1-4, 6-17, and 19 under 35 U.S.C. 103(a) as being unpatentable over "Rich Data About Customer Usage" (Narus' semantic

traffic analysis), written by Bill Roberts for Internet World, v5, n10, p27, published 3/15/1999, in view of "Narus and Portal Join to Provide Internet service Providers Full Customer Management and Billing Solutions; Alliance creates Solution Suites for ISPs to Build Service-Driven Businesses", Business Wire, 3/16/999, further in view of "NARUS Intelligence," February 1999, product detail sheet, digitally dated 2/18/1999, , in view of Kia et al. (U.S. Patent Number 6,404,870). Similar to the previous two aforementioned rejections, applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove.

With respect to the third element of the *prima facie* case of obviousness, the Examiner has amended his previous action to cite Kia (in each of the three separate rejections) to meet applicant's claimed "altering accounting operations based on a type of the identified application" (see all of the independent claims).

Kia, however, in no way alters accounting operations in any way that is a function of a type of the identified application. Only applicant teaches and claims such variation in accounting operations for catering to different application types. It appears that the Examiner has implicitly conceded with this assertion, in view of the fact that such specific limitations have not been particularly addressed in the Examiner's previous action. For example, no specific excerpt from Kia has been provided that even suggest such limitations.

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Nevertheless, in the spirit of expediting the prosecution of the present application and bringing this matter to a conclusion, applicant has amended each of the independent claims to include the following subject matter:

“wherein application events including adding participants and removing participants are detected and accounted for accordingly;

wherein a latency associated with the voice call is compared to a predetermined latency amount, and a compensation is given based on the comparison;

wherein addition and removal of call legs are tracked and corresponding service detail records are generated based thereon”

Thus, such features, which are absent from all of the Examiner’s proposed combination, provide advanced handling of VoIP calls, in the claimed manner. Again, a notice of allowance or a specific prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

With respect to the previously considered dependent claims, applicant has carefully reviewed the excerpts relied upon by the Examiner to reject the same, and has found serious deficiencies in the Examiner’s application of the prior art. Just by way of example, highlighted/emphasized below are claimed features that are clearly not even suggested by the Examiner’s suggested combinations:

2. The method of claim 1 further comprising generating a quality of service report for the session based on the application.
3. The method of claim 1 wherein the session is associated with an end user experience occurring within a definite time bound.
4. The method of claim 3 wherein the session is comprised of one or more additional sessions.
6. The method of claim 1 further comprising outputting a plurality of service detail records at predetermined intervals for the application, each service detail record including a billing identifier and a usage information, the usage

information derived from the number of packets in the session during the corresponding predetermined interval.

7. The method of claim 1 further comprising sending a command to a network device to control the session based on a policy, the policy defining a quality of service for the application.

8. The method of claim 1 further comprising sending a command to a network device to control the session based on a policy, the policy defining the amount of resources available to the session.

9. The method of claim 1 further comprising sending a command to a network device to stop the session based on a policy, the policy specifying a cost for use of resources and the policy triggering the transmission of the command upon the cost exceeding a predetermined amount.

13. The system of claim 10, wherein the application recognizer signals to the session streamer to treat the at least one flow as a session when the application recognizer cannot identify an application for the at least one flow.

14. The system of claim 10, further comprising a data collector coupled to the session streamer, the data collector for producing service detail records at predetermined intervals for the application corresponding to the session, each service detail record including a billing identifier and a usage information.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the following additional dependent claims that have been added, which include subject matter believed to be novel by applicant, when taken in combination with the remaining limitations, and is further deemed to provide more comprehensive and beneficial accounting features than those found in the cited prior art:

20. (New) The method of claim 1, wherein the reconstructed session analyzed, a plurality of statistics associated with the session are gathered based on the analysis, a policy is determined, and the accounting operations are performed based on the policy.
21. (New) The method of claim 20, wherein the statistics include start time, end time, time since last output, number of packets, number of bytes, average time between packets, moving average, latency, throughput, and jitter.
22. (New) The method of claim 20, wherein an aspect associated with an output of records is based on the identified application.
23. (New) The method of claim 20, wherein the statistics are gathered from a plurality of layers of a network protocol.
24. (New) The method of claim 23, wherein the layers of the network protocol include a physical layer, a data link layer, a network layer, a transport layer, a session layer, a presentation layer, and an application layer.
25. (New) The method of claim 20, and further comprising filtering the packets for removing packets unrelated to the session.
26. (New) The method of claim 20, and further comprising gathering a plurality of flow statistics associated with the plurality of flows.

27. (New) The method of claim 26, wherein the flow statistics include timestamps.
28. (New) The method of claim 27, wherein the timestamps are used to generate the statistics associated with the session.
29. (New) The method of claim 20, and further comprising outputting a plurality of reports including a plurality of the statistics reported in terms of the identified application.
30. (New) The method of claim 29, wherein the reports are outputted at an interval.
31. (New) The method of claim 29, wherein the reports are outputted at an application-specific interval.
32. (New) The method of claim 20, wherein the statistics are gathered based on the policy.

A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is hereby authorized to charge any fees that may be due or credit any overpayment to Deposit Account No. 50-1351 (Order No. XACTP015).

Respectfully submitted,

Kevin J. Zilka  
Registration No. 41,429

P.O. Box 721120  
San Jose, CA 95172-1120  
408-505-5100

Attorney Docket XACTP015

-17-